

575.0.0 CONSERVATION OPEN SPACE DEVELOPMENT

575.1.0 AUTHORITY & PURPOSE

This Conservation Open Space Development (COSD) is authorized and enacted in accordance with RSA 674:21. This COSD ordinance is intended to enhance and protect the health, safety, convenience, and general welfare of the residents of Litchfield while encouraging flexibility in the design and development of land, promote environmentally sound planning, conserve open space, retain and protect important natural and cultural features, provide for efficient use of land and community services, and preserve the traditional rural character of Litchfield to advance the goals stated in the master plan.

575.2.0 OBJECTIVES

- A. To preserve the natural beauty and rural character, preserve farmland, forests, and provide open space that serves as wildlife corridors, greenways, and provides the opportunity for light and passive recreation opportunities in close proximity to dwellings.
- B. To discourage sprawl by reducing the footprint of subdivisions by more efficient use of the land, which allows for reduced road length and associated water lines and utilities, less consumption of rural and agricultural land, preservation of those areas of the site that have the highest ecological value including wildlife habitat areas of highest condition identified based on NH Fish and Game's Wildlife Action Plan, drinking water supply areas, watersheds, wetlands, brooks and rivers.
- C. To locate buildings and structures on those portions of the site that are the most appropriate for development and avoiding developing in areas ill-suited for development, including areas with historic, archeological, and cultural features, poor soil conditions, high water table, which may be subject to frequent flooding.
- D. To create a contiguous network of open spaces or "greenways" by linking the common open spaces within the subdivision and to open space on adjoining lands wherever possible.
- E. To reduce the impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff.
- F. To provide alternative housing opportunities that meet the needs of residents of varying age, income and need.

575.3.0 DEFINITIONS

For the purpose of this chapter, the terms used herein are defined as follows:

Applicant: The owner of land proposed to be subdivided or his representative.

Buffer: Land area within which adequate vegetation is maintained or provided to visibly separate or screen one use from another and/or to minimize potentially negative impacts on surrounding areas, e.g., shield or block noise, light or other nuisances, reduce water pollution. Also known as a "vegetated buffer."

Buildable Area: Land area of a parcel excluding non-buildable area.

Buildable Lot: The smallest lot area established by the zoning ordinance on which a use or structure may be located in a particular district.

Building Envelope: Area of a building lot identified on a subdivision plan indicating the allowed limits of clearing and grading, and within which all structures, and, when applicable, the well and septic systems, including the tank and leach field, shall be located.

Conservation Easement: A permanent legal restriction against future development and other activities as specified in the conservation easement deed. An easement may be worded to permit or restrict public access, allow or disallow recreational uses, allow or disallow other uses, such as limited development, agriculture, or forestry. Easements are tied to the title of the land, regardless of subsequent ownership.

Conservation Open Space Development: An alternative form of residential development where, instead of subdividing an entire tract into lots of conventional size, a similar number of housing units are arranged on lots of reduced dimensions, with the remaining area of the parcel permanently protected as designated open space. Also referred to as “open space subdivision.”

Deed Restriction: A restriction on the use of land usually set forth in the deed for the property. Also known as a “restrictive covenant.”

Designated Open Space: Reserved land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the Planning Board under this ordinance as part of a Conservation Open Space Development.

Easement: The right or privilege that a person may have in another person’s property, often for the purposes of installing and maintaining utilities and drainage ways or allowing a right of passage.

Homeowners Association: A private corporation, association, or other legal entity organized in accordance with state law and established by the applicant or the member individuals for the benefit and enjoyment of its members, including oversight and management of common open space, designated open space, and/or shared facilities.

Non-buildable Area: Land area that cannot be counted toward the minimum lot size under a conventional subdivision, including areas with the following characteristics: wetlands or wetland soils as defined under RSA 482-A:2, X; slopes greater than 25 percent; submerged areas; utility rights-of-way; land area within the 100-year floodplain; or land that is restricted from development by covenant, easement or other restriction.

Open Space Common: Land within or related to a development, exclusive of land dedicated as designated open space, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development and/or the town and may include such complementary structures and improvements as are necessary, appropriate and approved by the Planning Board.

Restrictive Covenant: A restriction on the use of land usually set forth in the deed for the property.

Yield Plan: A plan that depicts the maximum number of buildable lots that would be permitted in a conventional subdivision that meets the applicable state and local requirements, absent waivers

or variances. The Yield Plan does not include engineering details, but shall provide such minimum information necessary to show the number of buildable lots, setbacks, general layout of the subdivision, any road network and drainage areas. The plan is used to support a general discussion with the Planning Board as to the form of the plan, the objectives of the zoning ordinance and applicable subdivision or site plan regulations.

575.4.0 *APPLICABILITY*

To facilitate the purpose and objectives of this ordinance and achieve the goals in the Litchfield Master Plan, all subdivisions twenty (20) acres or greater intended for residential use shall use a Conservation Open Space Development (COSD) design approach, unless the applicant can demonstrate mitigating circumstances that prevent such a development or the application is granted a conditional use permit as detailed in the following paragraph.

575.4.1 Authorization to Issue a Conditional Use Permit:

Authority is hereby granted to the Planning Board, as allowed under RSA 674:21, II, and under section 406 of Litchfield's Zoning ordinance, to issue a conditional use permit to modify the requirements of this section as follows:

- A. The Planning Board may issue a conditional use permit for the parcel to be developed as a conventional subdivision when it finds that:
 - 1. The parcel is ill-suited for development using Conservation Open Space Development design, or a conventional design provides greater or equal benefits to the community; and the conventional subdivision design retains and protects important natural and/or cultural features identified by the Planning Board and/or the site inventory, or;
 - 2. The subdivision creates lots that are equal to or greater than eleven (11) acres and each lot created has existing deed restrictions prohibiting further subdivision, or;
 - 3. The subdivision creates not more than one (1) additional lot accommodating one (1) dwelling unit, or;
 - 4. The subdivision creates five (5) or fewer dwelling units and does not require a road, or;
 - 5. The proposal is for Workforce Housing and meets 575.4.1 A, 1 above, or demonstrates it is not economically viable under COSD (Incentives do not apply to COSD standards), or;
 - 6. Public water is not available to the site.
- B. The Planning Board may issue a conditional use permit for a modified Conservation Open Space Development design to allow for variations from certain requirements of this section as specified herein. Such modifications shall be consistent with the purposes and standards of this section; fall within the guidelines contained herein, and shall not be detrimental to public health, safety or welfare.

575.4.2 Sequential Subdivisions:

The provisions of this ordinance shall apply to the sequenced development of a parent parcel over time through separate successive applications. When a subdivision is proposed that involves part of a larger parcel or includes lots that are capable of further subdivision, the Planning Board may

require that a site inventory and a conceptual (non-binding) long-range plan be submitted for the entire parcel and used to evaluate the proposed subdivision.

575.4.3 *Review Process:*

- A. A subdivision application under this section shall comply with the application and review process specified in the subdivision regulations.
- B. Subdivision plans shall comply with any additional applicable standards that govern the location and layout of lots and structures found elsewhere in this ordinance and as set forth in the Subdivision Regulations, except where in conflict with COSD standards.
- C. The Planning Board strongly encourages pre-application review. The preliminary review shall be informational and shall not bind the applicant or the Planning Board. However, the Planning Board shall be entitled to make recommendations with respect to the material presented during the preliminary review to assist the potential applicant in preparing a formal application. (E.g. Site Context Map, Site Inventory Map, Conceptual Plan) No decisions relative to the plan shall be made at the preliminary review.

A conceptual plan is required. Applicants shall demonstrate that their conceptual plan is consistent with the following approach for designing a subdivision:

- 1. **Step One: Identify Conservation Areas.** Identify those areas of the parcel containing or supporting important natural resource features and functions, as listed in the subdivision regulations or otherwise identified by the Planning Board for priority consideration for inclusion within the designated open space. If not included in the designated open space, other protective mechanisms, such as a substantial setback of development or maintenance of an undisturbed buffer around the feature, shall be identified.
- 2. **Step Two: Locate House Sites and Building Envelopes.** To the maximum extent feasible, house sites and building envelopes shall be located outside of those areas delineated in Step One. The location of the house sites and building envelopes shall also reflect the design objectives identified elsewhere.
- 3. **Step Three: Align Streets and Trails.** The minimum length and network of streets necessary to access each house lot shall be identified, subject to the road standards of the Town and with consideration given to conforming the street to the natural landscape. Proposed trails shall be identified where access to the designated open space is appropriate and/or to provide for pedestrian circulation within the development as well as pedestrian access to areas outside the development.
- 4. **Step Four: Identify Lot Lines.** Lot lines for each house site, or group of homes on a common lot, shall be identified. The placement of the lot lines shall give consideration to those areas identified in Step One as well as conform to the natural features of the landscape to the greatest extent possible, e.g., follow stone walls, lines of boundary trees, streams. The delineation of lots shall also consider the privacy provided for individual homeowners and opportunity for future owners to reasonably expand the structures on the lot.

575.4.4 *Legal Review:*

Prior to final approval by the Planning Board, the applicant shall submit for review and approval by Litchfield's Town Counsel any restrictive covenants, condominium or cooperative agreements, conservation easement, deed restrictions, or other legal agreements proposed for use in the Conservation Open Space Development. The applicant shall pay all associated costs of the legal review.

575.5.0 ***STANDARDS AND CONDITIONS***

575.5.1 *Location:*

Conservation Open Space Developments (COSD) is permitted in the Residential District and requires public water supply and individual onsite subsurface waste systems.

575.5.2 *Uses:*

Common area, conservation land, open space or public open land within a COSD shall only be used for conservation, passive recreation or other use(s) approved by the Planning Board. Uses shall support the purpose and objectives in this ordinance. See Open Space Requirements below for details.

575.5.3 *Minimum Tract Size:*

The parent lot of a Conservation Open Space Development (COSD) shall be at least ten (10) contiguous acres. Planning Board approved consolidation plans creating a single lot of at least ten (10) acres qualify, and may be conditioned on final approval of a COSD and recorded together. See Specifications for Individual Lots below.

575.5.4 *Maximum Density:*

The applicant shall comply with the following requirements described below for calculating the base number of dwelling units that may be constructed on the property. If the subdivision involves only part of a parcel, the buildable area shall be calculated for that portion of the parcel proposed to be included in the subdivision.

- A. The number of dwelling units permitted in any COSD shall be equal to or less than the number of dwelling units permitted in a conventional subdivision plan under Litchfield's Zoning ordinance (E.g. Meets all frontage, setback, buffer, area, and dimensional requirements, etc.), without any Planning Board waivers or Zoning Board of Adjustments variances required.
- B. A Yield Plan (See Yield Plan in Definitions) shall be submitted as part of the application for subdivision approval. Under this approach, the applicant presents a Yield Plan that fully complies with the requirements for a conventional subdivision, as described above, to determine the number of allowable buildings and dwelling units permitted. The Yield Plan does not include engineering details, but shall provide such minimum information necessary to show the number of buildable lots, general layout of any road network and drainage areas. The plan is used to support a general discussion with the Planning

Board as to maximum density, and meeting the objectives of the zoning ordinance and applicable subdivision or site plan regulations.

- C. Included with the Yield Plan, the applicant shall disclose any proposed waivers and/or variances that will impact the density and design of the proposed COSD if granted, so the Planning Board may make an informed determination as to whether the purpose and objectives have been met.

575.6.0 *DIMENSIONAL REQUIREMENTS*

575.6.1 *Specifications for Individual Lots:*

Dwellings may be situated in a manner that is consistent with the objectives stated above and as specified in the following standards. The size of the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot sizes will allow for the creation of a high-quality living environment for the residents of the subdivision and the abutting property owners.

- A. **Building Lot Size:** Minimum lot size is 0.50 acres/21,780 sq. ft. of contiguous dry land, excluding wetlands, FIRM Special Flood Hazard Areas (100-year Floodplain), utility right-of-ways, or other restrictions upon the land (E.g. easement, covenant).
- B. **Alternative Lot Sizing:** The Planning Board may authorize variations from the minimum lot sizes specified above by conditional use permit, provided the Planning Board determines that the following conditions are met:
1. All lots comply with the New Hampshire Department of Environmental Services requirements for subsurface wastewater management (developments may utilize individual septic systems); and
 2. The maximum density determined is not exceeded (excluding discretionary incentives, if offered or agreed to by the Planning Board)
- C. **Frontage and Front Setback Buffer:** Minimum frontage for individual building lots is ninety (90) feet on a Class V roadway or higher. Access and frontage to individual lots shall be taken from the proposed road network of the proposed COSD.

All buildings, structures and parking shall be set back a minimum of one-hundred fifty (150) feet from the edge of all public right-of-ways existing prior to the COSD application, except for NH 3A. The setback buffer for NH 3A shall be two-hundred fifty (250) feet from the edge of right-of-way. The setback from the Merrimack River shall be one-hundred fifty (150) feet from the mean high water level. (As determined by NHDES)

- D. **Buffer from Abutting Lots of Record:** Any building, structure, roadway, or parking area shall be fifty (50) feet of an abutting lot of record. This is intended to serve as an undisturbed visual buffer.

Where the natural visual buffer does not provide adequate screening from abutting uses, the Planning Board may require additional screening, either vegetative or other, to provide adequate transition.

- E. **Building Setbacks / Buildable Area:** On internal COSD roadways, all buildings shall be set back thirty (30) feet from the edge of right-of-way, and set back twenty (20) feet from lot lines with no road frontage. All setbacks, buffers, and other legal restrictions on the land shall be depicted on the COSD plan and in plan notes. The remaining area depicts the buildable area for locating dwellings and accessory buildings and structures.
- F. The Planning Board may authorize variations from the above standards, except for setbacks from a wetland/shoreline or any requirement covered by state regulation or addressed elsewhere in this ordinance for the purpose of providing flexibility in the design of the subdivision to meet the objectives of this ordinance section.

575.6.2 *Design Standards for Developed Areas:*

- A. **Building Construction:** In addition to Traditional “Stick-built” wood or metal frame construction, “Pre-Site Built Housing” (modular) as defined under RSA 674:31-a and RSA 205-C, and permanently placed on a slab or foundation, are permitted in COSDs. Manufactured Housing as defined under RSA 674:31 and RSA 205-D is prohibited in COSDs, except as permitted under section 402, Temporary Placement of Manufactured Housing. Building design shall be compatible with adjacent development and in harmony with the character of the Town of Litchfield’s existing housing stock.
- B. **Parking: No on-street parking.** Individual lots shall provide adequate off-street parking for two (2) or more vehicles.

575.7.0 ***OPEN SPACE REQUIREMENTS***

- A. Open space in a COSD shall be permanently protected.
- B. Any use of the designated open space is subject to approval of the Planning Board in consultation with the Conservation Commission and shall demonstrate that such uses shall not negatively impact the natural and/or cultural amenities preserved through the COSD design.
- C. The following uses generally are permitted in the designated open space, unless specifically prohibited or restricted as a condition of subdivision approval for the purposes of protecting important natural features or characteristics of the parcel:
 - 1. Forest management.
 - 2. Agricultural cultivation and pastures.
 - 3. Passive (non-motorized) trails and recreational uses.
- D. Portions of open space may be permitted by special permit to be used for the following. The Planning Board may impose specific criteria or restrictions on such uses as deemed necessary to support the goals of this section:
 - 1. Active outdoor recreation uses, including formal playgrounds and fields.
 - 2. Parking areas for access to the designated open space.

- E. The removal of soil, trees and other natural features from the designated open space is prohibited, except as consistent with conservation objectives or permitted uses as provided above.
- F. The designated open space shall be retained in a natural, undisturbed state, except for those activities permitted and approved as provided above, or as required for active management according to a conservation agreement or management plan written by a qualified natural resource professional.
- G. Adequate permanent public access to open space shall be provided and the location(s) require Planning Board approval.

575.8.0

CONTROL AND MANAGEMENT OF COMMON AND OPEN SPACE LAND

- A. Common land, private roadways, green space, etc. that is not held in private ownership or designated as open space shall be held, maintained and managed in a manner approved by the Town Counsel and acceptable to the Planning Board. (E.g. Association Agreement)
- B. Designated open space shall be open to the public and be permanently protected by a conservation easement. After approval by Town Counsel of all legal documents, and at the Planning Board's discretion, open space shall be conveyed and or conservation easement granted to:
 - 1. The Town of Litchfield or its designee, or;
 - 2. A non-profit organization (E.g. Land Trust), the principal purpose of which is conservation/stewardship of open space and any of the purposes for the open space set forth above, or;
 - 3. A corporation or trust owned jointly or in common by the owners of lots within the COSD. If such a corporation or trust is utilized, ownership thereof shall pass with the conveyance of the lots in perpetuity. All documents necessary for ownership, maintenance and conservation are required and must be approved in form and content by Town Counsel to protect the Town's rights to guarantee protection of all designated open space.